THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.4177 OF 2006

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to call for records relating to the order dated 22.02.2006 in O.P.No.41 of 2005 on the file of the A.P. Co-operative Tribunal, Warangal and to quash the same being arbitrary and illegal.

The facts, in brief, are as under:

Election to the Managing Committee of the 6th respondent-Bank was held on 21.10.2005. It is not in dispute that the petitioner as well as respondents 1 to 4 herein were elected as members of the managing committee, which consists of 13 members in all. Thereafter, the 5th respondent-Election Officer issued notice in Form XIII calling upon the elected members to elect office bearers. In pursuance thereof, petitioner as well as respondents 1 to 4 filed their nominations for the post of the President. However, the 5th respondent-Election Officer rejected the nominations of respondents 1 to 4 on the ground that a member can either propose or second one candidate only; whereas, the nominations of respondents 1 to 4 were proposed and seconded by the very same persons. That apart, so far as 2nd respondent is concerned, it was found that he had not only proposed respondents 1,3 and 4, but he himself filed nomination for the post of the President. Thus, having rejected the nominations of respondents 1 to 4, the 5th respondent-Election Officer declared that the petitioner was elected unanimously as the President. Aggrieved by the said action of the 5th respondent in rejecting the nominations of respondents 1 and 2, O.P.No.41 of 2005 was filed before the A.P. Co-operative Tribunal, Vijayawada with a prayer to set aside the election of the petitioner (arrayed as respondent No.1 in O.P.No.41 of 2005) as the President of the Bank and to direct the Election Officer to hold fresh election for the post of the President.

In the Election Petition, it was pleaded that the Election Officer had illegally rejected the nominations of the petitioners and also respondent Nos.3 and 4 therein, on the ground that the same proposer proposed more than one candidate, and thus,

illegally declared respondent No.1 therein (writ petitioner) as unanimously elected as the President of the Bank.

The said Election Petition was opposed by the writ petitioner as well as the Election Officer by filing separate counter-affidavits.

The Tribunal below having heard both parties, by order dated 22.02.2006 allowed O.P.No.41 of 2005 thereby, setting aside the election of the writ petitioner as the President of the Bank and directed the District Collector and Election Authority to conduct re-election to the post of President of the Bank by authorizing any competent Officer other than the 2nd respondent therein by 31.03.2006. The said order is under challenge in this Writ Petition.

I have heard the learned counsel for both parties and perused the material on record.

Learned counsel for the petitioner vehemently contended that the Tribunal below has erred in setting aside the election of the petitioner holding that the nominations of respondents 1 to 4 were illegally rejected. Learned counsel submitted that under Rule 22(4)(b) of the A.P. Co-operative Society Rules, 1964, (for short “the Rules”) a proposer can either propose or second one candidate only. In view of the restriction under Rule 22(4)(b) of the Rules, the Election Officer has rightly rejected the nominations of respondents 1 to 4, since admittedly, 2nd respondent who proposed respondents 1 and 4 also filed nomination for the post of President. According to the learned counsel, Rule 22(4)(b) of the Rules, shall also be made applicable to the election of office-bearers, and therefore, the conclusion of the Tribunal below is erroneous and contrary to law.

On the other hand, learned counsel appearing for respondents 1 to 4 submitted that the Order of the Tribunal below is in accordance with statutory provisions and the findings recorded are on proper appreciation of material on record, and therefore, no interference by this Court is warranted.

It is to be noted that A.P. Co-operative Societies Act, 1964 (for short ‘the Act’) as well as the Rules made thereunder underwent major changes under the A.P. Co-operative Societies (Amendment) Act, 2005 (Act 6 of 2005) with effect from 31.01.2005. One of the important changes effected was substitution of sub-section

(5) of Section 31 of the Act, by virtue of which, President of the society shall be elected by the members of the committee from among themselves, and not by direct election by the General Body. Sub-section (5) of Section 31 may be extracted hereunder:

> "31(5) in the case of such classes of Co-operative Societies as may be prescribed, the President shall, subject to the provisions of Section 21-A, be elected by the members of the Committee from among themselves in the manner prescribed. The President elected under this sub-section shall be an ex-officio member of the committee."

Correspondingly, Rule 22 of the A.P. Co-operative Society Rules, 1964, which provides for conduct of elections to the Co-operative Societies has also been extensively amended under G.O.Ms.No.223, dated 27.06.2005 and G.O.Ms.No.324, dated 29.07.2005.

Sub-rule (4) of Rule 22, which deals with nominations of candidates for election to the members of the managing committee runs as under:

> "**(4) Nomination of candidates:**
>
> a. ……..
>
> b. Every nomination shall be signed by one proposer and one seconder who shall be eligible members on the voters list. *A member can either propose or second one candidate only*"

Similarly, sub-rule (12) of Rule 22, which deals with election of office bearers, as amended runs as under:

> " **(12) Election of office bearers:**
>
> (a)……..
>
> b. the procedure for conduct of election of the office bearers shall be as follows:
>
> The Election Officer shall issue a notice in Form_XIII to the directly elected President and all members of the managing committee calling upon them to elect the office bearers of the society. This notice shall specify the mode and programme of conduct of elections. On the appointed day, between the hours of 9.00 to 11.00 hrs., nominations shall be received. *The nominations shall have a proposer and seconder who shall be from the other elected members of the managing committee.* "

On a reading of the above Rules, it is clear that the restriction that a member can either propose or second only one candidate applies to election to the members

of the managing committee alone. Such restriction does not find place in sub-rule (12), Clause (b) of Rule 22. The Tribunal below having noted the above distinction, concluded that the notification under Rule 22 (4)(b) is applicable only to election to the members of the committee but not to the election of office bearers, and accordingly, held that the Election Officer committed an error in holding that the nomination of the petitioner alone stood the test of scrutiny. On a careful consideration of the statutory rules as amended with effect from 31.01.2005, I am unable to hold that the conclusion of the Tribunal below that the Election Officer committed an error in rejecting the nominations of respondents 1 to 4 herein, suffers from any infirmity.

However, the learned counsel for the petitioner further contended that in the absence of any specific ground in the Election Petition that the procedure adopted by the Election Officer was contrary to Rule 22(12), the Tribunal below ought not to have set aside the election of the petitioner.

Though the petitioners in the Election Petition did not refer to Rule 22(12), it was clearly pleaded that the Election Officer had illegally rejected their nominations as well as respondents 3 and 4 on the ground that the same proposer had proposed more than one candidate, and thus illegally declared respondent No.1 therein (writ petitioner) as unanimously elected as the President of the Bank.

In the light of the specific pleading, I do not find any substance in the above contention of the learned counsel for the petitioner.

Similarly, the mere fact that the petitioners in the Election Petition relied upon Rule 22-B (c)(ii) while contending that the Election Officer shall decide the objections if any, at the time of the nominations, does not in any way vitiate the conclusion of the Tribunal below. Though the election petitioners quoted a wrong provision of law, the Tribunal below has rightly applied the correct provisions and allowed the Election Petition.

Learned counsel for the petitioner while relying upon the cases reported in **K. Narasimha Naidu v. Election Commission of India; V. Sivaramakrishna Rao v. Election Commission of India; Saligram Shrivastava v. Naresh Singh Patel;** and **Harikrishna Lal v. Babu Lal Marandi**, contended that as per the scheme of the Act and the Rules made thereunder, the restriction under sub-rule(4) of Rule 22 shall be made applicable to the election of office bearers also. I am unable to agree. The

decisions cited by the learned counsel for the petitioner have no application at all to the facts of the present case and the ratio laid down therein is of no assistance to the petitioner's case.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly, dismissed. No costs.

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(G. ROHINI, J.)

24th March, 2006.

Kgr

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***THE HON'BLE MS. JUSTICE G.ROHINI**

+WRIT PETITION No.4177 OF 2006

% 24/03/2005

Vadlamudi Durga Prasad. … Petitioner

Vs.

$ Paruchuri Venkateshwar Rao

and others. … Respondents

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> Head Note

! Counsel for the petitioner : Smt A. Chaya Devi

^ Counsel for the respondents: Sri M. Rajamalla Reddy (for R1)

Cases Referred :

2001(2) ALT 29 (DB);

2 2001(2) ALT 11 (DB);

3. 2003 (2) SCC 176;

4. 2003 (8) SCC 613.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.4177 OF 2006

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24th March, 2006

Between:

Vadlamudi Durga Prasad. .. Petitioner

And

Paruchuri Venkateswara Rao and

five others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.4177 OF 2006

24th March, 2006.